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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,436	10/22/1999	RICHARD ROBERT CAPPADONA	7015/66635	9564
22242 7590 03/07/2008 FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER				
BECKER, DREW E				
ART UNIT		PAPER NUMBER		
1794				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/425,436

**Applicant(s)**

CAPPADONA ET AL.

**Examiner**

Drew E. Becker

**Art Unit**

1794

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-6, 8-26, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-6 and 8-19 is/are allowed.
- 6) ☒ Claim(s) 20-26, 29-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration under 37 CFR 1.132 filed 1/31/08 is insufficient to overcome the rejection of claims 20-26 and 28-30 based upon Barbour, DE 7527182, WO 92/00033, and Hupf et al as set forth in the last Office action because: the alleged evidence of commercial success must be commensurate in scope with the claims. See MPEP 716.03(a). The presently rejected claims 20-26 and 29-30 are much broader in scope than allowable claims 1-19 which require a dual function notch which enables removal of the movable member and acts as a slot to enable the whistle. This key feature is missing from claims 20-26 and 29-30. In addition, Exhibit A only discloses industry sales figures, rather sales figures for Carico International Inc in particular.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 20-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. The phrase "at sub-atmospheric pressure" in claim 20 does not appear to be supported by the specification. The phrase "configured for waterless cooking at sub-atmospheric pressures" in claim 23 does not appear to be supported by the specification. Applicant attempts to provide support via a declaration made by Mr. Cappadona. However, support must be found within the body of the application. Applicant argues that the term "waterless cooking" be given its broadest reasonable interpretation. Therefore, it has been interpreted to mean: cooking without the use of water as previously cited during the examination of this application. Applicant also has not pointed out where new claims 24-30 (filed 4/23/07) are supported by the specification.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20-22, 24-26, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbour [Pat. No. 6,293,271] in view of DE 7527182.

Barbour teaches a cooking device suitable for stovetop waterless cooking comprising a pan (Figure 1, #24), a removable lid with upper and lower surfaces as well as a rim (Figure 1, #26), an aperture through the lid (Figure 8, #74), a removable thermometer extending through the aperture, the thermometer inherently having a display, the

thermometer having a probe extending down to a height above the rim (Figure 4, #78), and the lid being shaped and sized sufficiently to be capable of inversion and nesting with the pan when the racks are removed (Figure 9). Barbour does not recite a knob body, a temperature sensing device within the probe, the probe being a thin-walled, hollow tube, a holder and retaining member which align, the aperture passing through both the knob and lid, and the probe extending no more than 1.5" from the lid bottom. DE 7527182 teaches a cooking device comprising a lid with a knob assembly (Figure 1), a thermometer comprising a thin-walled, hollow tube with a temperature sensing device (Figure 1, #16-18), a holder (Figure 1, #12), and a retaining member which is screwed onto the holder when the threads are aligned (Figure 1, #13). It would have been obvious to one of ordinary skill in the art to incorporate the unitary thermometer structure and knob-shaped handle of DE 727182 into the invention of Barbour since both are directed to cooking devices, since Barbour already included a removable thermometer (Figure 4, #78) and a handle (Figure 7, #68), since knob-shaped handles were commonly used as handles on cookware lids as shown by DE 7527182 (Figure 1), since Barbour simply did not describe the thermometer structure in detail, and since the thermometer and knob structure of DE 7527182 combined the handle and temperature sensing functions of Barbour into one unitary component which was still capable of being removed at will by simply removing the knob from the locking nut of DE 7527182 (Figure 1, #13). Regarding the length of the probe, it would have been obvious to one of ordinary skill in the art to scale the device of Barbour, in view of DE 19751218, so that the probe extended less than 1.5" since would have reduced the chance of the

thermometer being damaged by contacting food or objects beneath the lid. MPEP 2144.04 states: In re Rose , 220 F.2d 459, 105 USPQ 237 (CCPA 1955) (Claims directed to a lumber package "of appreciable size and weight requiring handling by a lift truck" where held unpatentable over prior art lumber packages which could be lifted by hand because limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art.); In re Rinehart, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 531 F.2d at 1053, 189 USPQ at 148.). In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

6. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barbour, in view of DE 19751218, as applied above, and further in view of WO 92/00033.

Barbour and DE 19751218 teach the above mentioned components. Barbour also teaches removing the thermometer without the use of separate tools (Figure 2, #78). DE 19751218. Barbour and DE 19751218 do not recite a holder received in a recess of the knob. WO 92/00033 teaches a cooking pan with a lid having a knob assembly (Figure 1a, #3) comprising a thermometer (Figure 1a, #5) and a holder which is received within a recess of the outer knob assembly (Figure 1a, #11). It would have been obvious to

one of ordinary skill in the art to incorporate the holder of WO 92/00033 into the invention of Barbour, in view of DE 19751218, since all are directed to cooking pans, since DE 19751218 already included a holder (Figure 1, #12), and since the recessed holder of WO 92/00033 was better protected from possible damage by being recessed within the knob assembly (Figure 1a, #3 & 11).

7. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barbour in view of DE 7527182 and Hupf et al [Pat. No. 6,004,000].

Barbour teaches a method of cooking by placing foods with little or no water in a pan (Figures 12-13, #24), a removable lid with a rim (Figures 12-13, #26), an aperture in the lid which receives a thermometer (Figures 12-13, #74 & 78), a blockable vent (Figures 12-13, #76 & 80), the thermometer including a probe, an inherent display, and the lower end of the probe being located above the rim (Figures 12-13, #78), applying heat to the pan bottom (Figures 12-13, #12), and measuring the temperature within the pan (column 6, line 56). Barbour does not recite a knob assembly, a temperature sensing device beneath the aperture, and closing the vent and reducing the heat when the temperature reaches a predetermined point. DE 7527182 teaches a method of cooking by use of a lid with a knob assembly (Figure 1, #12), an aperture holding a thermometer with a temperature sensor beneath the aperture (Figure 1, #16-18). It would have been obvious to one of ordinary skill in the art to incorporate the thermometer structure and knob of DE 727182 into the invention of Barbour since both are directed to cooking devices, since Barbour already included a removable thermometer (Figure 4, #78) and a handle (Figure 7, #68), since knobs were commonly used as handles on cookware

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lids as shown by DE 7527182 (Figure 1), since Barbour simply did not describe the thermometer details, and since the thermometer and knob structure of DE 7527182 combined the handle and temperature sensing functions of Barbour into one unitary component which was still capable of being removed at will. Hupf et al teach a method of waterless cooking by placing food with little or no water into a pan, placing a lid over the pan, heating the bottom of the pan, measuring the temperature, closing the vent, and reducing the heat (column 6, lines 31-44). It would have been obvious to one of ordinary skill in the art to incorporate the cooking steps of Hupf et al into the invention of Barbour, in view of DE 7527182, since all are directed to methods of cooking food, since Barbour already included cooking food with little or no water (Figures 12-13), since the device of Barbour was expressly built for multiple different cooking techniques (abstract), since Barbour teaches employing other additional cooking modes (column 7, line 57), since Barbour already included a temperature sensor, bottom heating, and a vent (Figures 12-13, #12, 78, 80) thus providing the capability for a waterless cooking method to be executed, and since the waterless cooking method of Hupf et al was well known in the art and commonly employed (column 6, lines 31-44).

***Allowable Subject Matter***

8. Claims 2-6 and 8-19 are allowed.
9. The following is an examiner's statement of reasons for allowance: the cooking devices of independent claims 2, 8, and 15 define over the prior art of record since the



prior art does not teach, suggest, nor render obvious a dual function notch which enables removal of the movable member and acts as a slot to enable the whistle.

### ***Response to Arguments***

10. Applicant's arguments filed 1/31/08 have been fully considered but they are not persuasive.

Applicant argues that waterless cooking included "sub-atmospheric pressure". However, the specification does not contain this definition. Applicant's attention is drawn to the BPAI Decision of 2/21/07 which addresses this issue (page 5). It points out that a specific definition must be found in the application, otherwise a term is given its broadest reasonable interpretation which in this case is: cooking without water. Also, it points out that the application does not support "sub-atmospheric pressure".

In response to applicant's argument that each reference does not teach each and every limitation, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that DE 7527183 does not teach a knob assembly with a removable holder and retaining member. However, DE 7527183 clearly teaches a lid and knob assembly with a removable holder and retaining member (Figure 1, #12-13).

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794